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CELA FIRST GENERAL COUNSEL'S REPORT

MUR: 6215

DATE COMPLAINT FILED: September 28, 2009

DATE OF NOTIFICATION: October 2, 2009

DATE OF LAST RESPONSE: January 7, 2010

DATE ACTIVATED: January 12, 2010

EXPIRATION OF STATUTE OF LIMITATIONS:
January 19, 2014 through April 3, 2014¹

COMPLAINANT:

Randy L. Spitzmesser

RESPONDENTS:

Tate Snyder Kimsey Architects Ltd.

J. Windom Kimsey

William E. Snyder

Robert Boyle

Christopher Fenton

Michael Alcorn

Peggy Memering

Shelly Lyons

Greg Gordon

Daniel Knott

Bruce Bowman

Alan Locke

John Gautrey

Maizie Pusich

Dwayne Miller

Friends for Harry Reid and Claude Zobell, in his
official capacity as Treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(13)

2 U.S.C. § 432(i)

2 U.S.C. § 434(a)

2 U.S.C. § 434(b)

2 U.S.C. § 441b(a)

2 U.S.C. § 441b(b)

¹ Based on the documents produced by respondents, we were not able to determine an exact date for when the statute of limitations would begin to expire. However, the documents indicate that the invitations for the fundraiser at issue were to be sent out the week of January 19, 2009.

2 U.S.C. § 441c(a)
2 U.S.C. § 441f
11 C.F.R. § 100.12
11 C.F.R. § 104.7
11 C.F.R. § 110.4
11 C.F.R. § 110.6(d)(2)
11 C.F.R. § 114.1(j)
11 C.F.R. § 114.2(f)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that Respondents violated provisions of the Federal Election Campaign Act, as amended ("Act"), in connection with a fundraiser held in honor of Senator Harry Reid by Tate Snyder Kimsey Architects, Ltd. ("TSKA") on February 17, 2009 ("Reid Fundraiser"). The Complainant, Randy L. Spitzmesser, a former employee and shareholder of TSKA, alleges that Respondents Windom Kimsey and William Snyder, Principals of TSKA, illegally reimbursed him and other individuals for political contributions made to Friends for Harry Reid, the principal campaign committee for Senator Harry Reid ("Reid Committee"). The Complaint further alleges that Kimsey and Snyder organized this reimbursement scheme to influence Senator Reid in order to obtain a lucrative government contract with the General Services Administration ("GSA"), and that these Principals used coercive tactics when soliciting contributions to the Reid Committee. Finally, the Complainant alleges that TSKA intentionally provided the Reid Committee with false contributor information, which appeared in reports filed with the Commission.

In its Response, TSKA admits to reimbursing two contributions, totaling \$1,500, made to the Reid Committee during the Reid Fundraiser in violation of 2 U.S.C. § 441f but contends that

1 the majority of contributions made to the Reid Committee through this event were not
2 reimbursed.² Most of the individual contributors confirmed in their responses that they used
3 personal funds to make contributions to the Reid Committee and stated that they did so
4 voluntarily. The Reid Committee states that it neither knowingly accepted reimbursed
5 contributions nor has it knowingly reported inaccurate contributor information with the
6 Commission. Response of Friends for Harry Reid ("Reid Committee Response") at 2-3. In
7 addition, the Reid Committee indicates that it has taken subsequent remedial measures in light of
8 the violations alleged in the Complaint, such as disgorging the amount of the contribution made
9 by TSKA in the Complainant's name and asking all contributors connected to the February 2009
10 fundraiser to confirm his or her occupation in writing. *Id.*

11 Documents attached to the Complaint, as well as addressed by TSKA in its response,
12 reveal that TSKA, a Nevada corporation, apparently facilitated the making of contributions by
13 using corporate resources to hold the Reid Fundraiser in violation of 2 U.S.C. § 441b and
14 11 C.F.R. § 114.2(f), and the Reid Committee knowingly accepted these contributions in
15 violation of section 441b. Furthermore, the documents indicate that TSKA was in the process of
16 negotiating contracts with the GSA when TSKA made these contributions to the Reid Committee
17 in violation of 2 U.S.C. § 441c. *See supra* Section II.A.

² See Memorandum re: Investigation Summary, attached to TSKA Response, Jan. 6, 2010 ("TSKA Investigation Mem.") at 2. After TSKA and certain of its employees were notified of the Complaint, counsel requested a meeting with OGC and offered to provide a comprehensive response to address the allegations. Subsequently, we received almost 400 pages of documents and a detailed memorandum describing results of TSKA's internal investigation. Similar to respondents in MUR 5405 (Apex Healthcare, Inc.), counsel styled the submissions as confidential settlement communication subject to Federal Rule of Evidence 408 and 11 C.F.R. § 111.21. These submissions do not constitute a bona fide settlement offer made for negotiation, however, as Rule 408 does not apply to this proceeding, the Commission has not yet authorized this Office to enter into pre-probable cause conciliation, and these submissions do not include a specific settlement offer. *See* MUR 5405, First General Counsel's Report, n. 1; *see also* Letter to S. Ryan, Jan. 26, 2010. Therefore, consistent with the approach taken in MUR 5405, we have treated TSKA's submission as its response to the complaint.

1 Based on the discussion below, we recommend that the Commission:

- 2 • Find reason to believe that TSKA and Windom Kimsey violated 2 U.S.C. §§ 441b
3 and 441f by making a contribution in the name of another with corporate funds;
- 4 • Dismiss the allegation that Christopher Fenton, Peggy Memering, and Shelly Lyons
5 violated 2 U.S.C. § 441f and send cautionary letters;
- 6 • Find no reason to believe that William Snyder, Michael Alcorn, Robert Boyle,
7 Dwayne Miller, Greg Gordon, Daniel Knott, Bruce D. Bowman, Alan Locke, John
8 Gautrey, and Mazie Pusich violated 2 U.S.C. § 441f;
- 9 • Find reason to believe that TSKA and Windom Kimsey violated 2 U.S.C. § 441b
10 and 11 C.F.R. § 114.2(f) by making prohibited contributions or consenting to the
11 making of such contributions, facilitating the making of contributions, and soliciting
12 outside the restricted class;
- 13 • Find reason to believe that TSKA violated 2 U.S.C. § 441c by making a prohibited
14 contribution as a government contractor;
- 15 • Find no reason to believe that the Reid Committee violated 2 U.S.C. § 441f by
16 knowingly accepting contributions made in the name of another;
- 17 • Find reason to believe that the Reid Committee violated 2 U.S.C. § 441b by
18 knowingly accepting prohibited corporate contributions;
- 19 • Find reason to believe that the Reid Committee violated 2 U.S.C. § 434(b)(3)(A) by
20 failing to disclose contributions exceeding \$200.

21 In addition, we recommend that the Commission enter into pre-probable cause conciliation with

22 TSKA, Windom Kimsey, and the Reid committee

23 and close the file as to the remaining respondents.

1 **II. FACTUAL BACKGROUND**

2 **A. BACKGROUND ON TATE SNYDER KIMSEY ARCHITECTS, LTD.**

3 TSKA is an architectural design firm incorporated in the state of Nevada.³ The firm was
4 founded in 1960 and provides architectural services to local, state and federal agencies.⁴ TSKA
5 does not have a registered political committee with the Commission. J. Windom Kimsey is the
6 President and Design Principal of TSKA,⁵ and William J. Snyder is Chairman of the Board and
7 is also a Principal of TSKA.⁶ From approximately July 31, 2000 until his termination from the
8 company on June 23, 2009, Complainant Randy L. Spitzmesser was a shareholder and was
9 employed as a Principal and Project Manager of TSKA.⁷

10 One of TSKA's major clients is the General Services Administration ("GSA"), which
11 handles acquisition and procurement for the federal government.⁸ On September 16, 2008,
12 TSKA was selected for an Indefinite Delivery Indefinite Quantity ("IDIQ") contract, pursuant to
13 which the government will buy an "indefinite-quantity" of supplies or services during a specified

³ See Entity Details of TSKA filed with Nevada Secretary of State, available at <https://esos.state.nv.us>;
Memorandum re: Investigation Summary, attached to TSKA Response, Jan. 6, 2010 ("TSKA Investigation Mem.")
at 2.

⁴ TSKA History, available at www.tatesnyderkimsey.com.

⁵ TSKA Investigation Mem. at 6.

⁶ Response of William Snyder ("Snyder Response") at 1.

⁷ Complaint at 1; TSKA Investigation Mem. at 2;

⁸ TSKA Investigation Mem. at 2.

1 period of time.⁹ See 11 C.F.R. § 16.504(a). The parties executed this contract on April 2,
2 2009, and it ultimately resulted in TSKA's award of an \$8.3 million GSA design contract on July
3 24, 2009, for the modernization of the Otay Mesa Land Port of Entry.¹⁰

4 **B. FEBRUARY 17, 2009 FUNDRAISER FOR FRIENDS FOR HARRY REID**

5 In December of 2008, Windom Kimsey attended a fundraising event for Senator Harry
6 Reid with Robert Boyle, a Project Architect at TSKA.¹¹ After attending the event, Mr. Kimsey
7 decided to hold a similar fundraiser for Senator Reid.¹² Mr. Kimsey and other TSKA staff then
8 worked with staff from Senator Reid's local campaign office to hold the event.¹³

9 Mr. Kimsey instructed his assistant, Peggy Memering, who normally plans office parties
10 and performs administrative tasks, to handle the logistics of the event and gave her a list of
11 potential contributors for the event.¹⁴ Ms. Memering appears to have spent a significant amount
12 of time organizing the event by communicating with the Reid Committee staff, helping to

⁹ The government is required to purchase only a minimum quantity set forth in the contract, potentially as low as \$100 based on the negotiated terms of the contract, but is not obligated to purchase any more supplies or services from the seller and may make purchases from other sources for similar supplies or services. See *Varilease Technology Group v. U.S.*, 289 F.3d 795, 799 (Fed. Cir. 2002); *Travel Centre v. Barram*, 236 F.3d 1316, 1319 (Fed. Cir. 2001). The 2008 IDIQ contract apparently was the second awarded to TSKA. In 2003, GSA awarded TSKA an IDIQ contract but, during the five year time period for this contract, TSKA never received a task order for services from GSA. See TSKA Investigation Mem. at 2; TSKA GSA Negotiation/Contract Timelines, TSK000305. On February 8, 2008, it appears that Senator Reid inquired why GSA failed to place any task orders with TSKA under the first contract, and GSA informed him that TSKA could submit a bid for a new IDIQ contract. See Letter from David L. Bibb to the Honorable Harry Reid, June 2, 2008, attached to Complaint. The award of the 2008 contract followed this communication. Although the complaint suggests that Senator Reid exerted improper influence on the GSA to purchase from TSKA, see Email from Robert Herbert, Office of Senator Harry Reid, to Lee Haney, Executive Vice President, Rogich Communications Group, Jun. 3, 2008 (attached to Complaint with handwritten annotation by the complainant), we have no information that the GSA contract was awarded as the result of Senator Reid's inquiry, see TSKA Investigation Mem. at 5, nor is this issue within the Commission's jurisdiction.

¹⁰ See TSKA Investigation Mem. at 2; TSKA GSA Negotiation/Contract Timelines, TSK000305.

¹¹ TSKA Investigation Mem. at 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 7.

1 produce the invitations, overseeing the guest list, arranging for a photographer, and working with
2 the catering vendor, Wolfgang Puck Café in Las Vegas.¹⁵ In particular, Ms. Memering
3 communicated with Reid Committee staff to ensure that the Committee received all of the
4 contributions, and on at least one occasion, mailed a contribution check to the Committee.¹⁶ In
5 certain communications, Reid Committee staff sought her assistance in collecting outstanding
6 contributions and in compiling and updating the guest lists.¹⁷ For example, Christopher
7 Anderson, a staff member of the Reid Committee, wrote in an email to Ms. Memering, "Peggy,
8 Here is the updated list of who attended and contributions. Please let us know what
9 contributions we can still expect."¹⁸ In response, Ms. Memering would send in an updated list.¹⁹

10 In addition, Mr. Kimsey asked Jane Michael, TSKA's marketing and graphic design
11 specialist, to create invitations for the event. Ms. Michael spent approximately 18 hours working
12 on the invitations in TSKA's Las Vegas Office, and TSKA paid her hourly wage of \$22.07 for
13 the time she spent creating the invitations. TSKA reimbursed both Ms. Michael as well as Ms.
14 Memering for costs relating to the production of the invitations,²⁰ but does not appear to have
15 charged the Reid Committee for such costs or for Ms. Michael and Ms. Memering's time.
16 Furthermore, although Mr. Kimsey notified Megan Jones, a Reid Committee staff member, that

¹⁵ *Id.*

¹⁶ See Email from Peggy Memering to Christopher Anderson, March 31, 2009, TSK000388.

¹⁷ See, e.g., Email exchanges re: Reid event, TSK000342, TSK000357, TSK000366, TSK000375.

¹⁸ Email exchange between Peggy Memering and Christopher Anderson, Feb. 18, 2009, TSK000370, Attachment A.

¹⁹ *Id.*

²⁰ See TSKA Investigation Mem. at 7, 8.

1 TSKA would be sending the invitations out during the week of January 19, 2009,²¹ it does not
2 appear that the Reid Committee sought to pay the costs for mailing the invitations.

3 Prior to the event, Ms. Jones sent Mr. Kimsey a draft invitation, which stated "Tate
4 Snyder Kimsey Architects invite you to a luncheon honoring Senator Harry Reid" and a
5 contribution form stating:

6 Federal law requires us to use our best efforts to collect and report the name and
7 mailing address, occupation and name of employer of individuals who make
8 contributions. Corporate contributions and contributions from non-U.S. citizens
9 who are not lawfully admitted permanent residence [sic] are prohibited. All
10 contributions by individuals must be made from personal funds and may not be
11 reimbursed or paid by any other person."²²

12
13 The final invitation prepared and distributed by TSKA included the same language.²³

14 Many of the individuals who received the invitations were not employees of TSKA,²⁴ and
15 according to the Complaint, some of these individuals were consultants who were part of the
16 design team for the Otay-Mesa Project.²⁵ TSKA and Reid Committee staff exchanged numerous
17 emails containing attachments where contributors were listed by name and employer.²⁶ In one
18 email, dated February 10, 2009, Megan Jones of the Reid Committee specifically asked Ms.

²¹ See Email from Windom Kimsey to Megan Jones, Monday Jan. 19, 2009, TSK000349. In the email, Mr. Kimsey told Ms. Jones, "We have been talking to Wolfgang Puck at the Springs Preserve, which our firm designed. I will let you know if we can confirm lunch there, but I don't anticipate that to be a problem. As soon as that is done we will send you a copy of our invite and get those sent out this week. I can also copy you on our mailing list for the event. Enjoy the inauguration and stay warm." *Id.* In response, Ms. Jones replied, "Sounds good." *Id.*

²² See Reid Committee Invitation, TSK 000335-336, Attachment B.

²³ See TSKA Invitation, attached as Exhibit A of Response of Dwayne Miller, Attachment C.

²⁴ See Guest List, TSK000002, Attachment D.

²⁵ The complaint specifically alleges that outside consultants, Greg Gordon of Greg Gordon & Associates, Dan Knott of PBS&J Corp., Bruce Bowman of Ninyo & Moore, and Alan Locke and John Gautrey of IBE Consulting Engineers were part of the design team for the Otay Mesa Project. Complaint at 2. In their responses, Messrs. Gordon, Knott, Locke, and Gautrey acknowledge that TSKA solicited them for the February 2009 Reid fundraiser, but none of these respondents state whether or not they were to work on the Otay Mesa Project.

²⁶ See, e.g., Email from Peggy Memering to Megan Jones with attached guest list, Feb. 10, 2009, TSK000363-364, Attachment E; Email from Peggy Memering to Christopher Anderson with attached guest list, Feb. 26, 2009, TSK00384-385, Attachment F.

1 Memering to invite a particular individual who worked for an outside trade association. Jones
2 asked:

3 Peggy,

4
5 Would you mind sending me the guest list today at your convenience. I need to
6 finalize Reid's trip memo today. Also, I'm assuming folks from the AIA
7 [American Institute of Architects] board locally have been invited to attend?
8 Randy Lavigne presented our campaign with PAC check a while back and we are
9 checking in with the national AIA to see if they will provide the remaining PAC
10 funds for this event. Additionally, we would love to have Randy attend if you all
11 agree, since she was not able to personally present the check to Senator Reid the
12 last time around.²⁷
13

14 Later that day, Christopher Anderson sent another email to Mr. Kimsey requesting a copy of the
15 guest list and stated:

16 Windom:

17
18 Pleasure to meet you. I spoke with the national AIA folks this morning, and they
19 should be sending someone from the local office with a PAC check. They also
20 want to help generate additional donors, if we can provide them with a list of who
21 is already on board for the event. Would you send me that list when you get a
22 chance.
23

24 Thanks,
25 Chris²⁸
26

27 On another occasion, the Reid Committee asked if Ms. Memering could determine
28 whether employees of IBE Consulting, Inc. would be sending in personal checks after the
29 Committee had received a corporate check from the corporation.²⁹ In an email, Christopher
30 Anderson stated, "We have the IBE Consulting, Inc. check from John and Alan, but have not

²⁷ Email exchange re: Reid event, TSK000342.

²⁸ Email from Christopher Anderson to Windom Kimsey, Feb. 10, 2009, TSK000357. The Commission's disclosure database does not indicate that AIA's PAC made a contribution through the Reid Fundraiser, but documents produced by TSKA show an AIA representative attended the event. See Guest List, TSK000002.

²⁹ See, e.g., Email Christopher Anderson to Peggy Memering, Feb. 24, 2009, TSK000380. .

1 received their personal checks. If you talk to them re: their contribution, can you also ask what
2 they would like me to do with the IBE check? I can void and return it to them or shred it."³⁰

3 The catering costs for the fundraiser totaled \$1,615.39.³¹ In email correspondence
4 between Ms. Memering and the Reid Committee, the parties agreed that TSKA would directly
5 pay the vendor and then the Reid Committee would send a reimbursement check.³² The
6 documents produced by TSKA reveal that TSKA paid for the catering costs by credit card on
7 February 14 and 18, 2009,³³ and the Reid Committee subsequently reimbursed the company on
8 February 24, 2009.³⁴ The Reid Fundraiser appears to have raised \$20,650.³⁵ The total amount of
9 contributions solicited outside the restricted class is approximately \$14,000.³⁶

10 C. ALLEGED COERCION AND REIMBURSEMENT SCHEME

11 According to the Complaint, the principals of TSKA allegedly coerced and reimbursed
12 employees and outside consultants for contributions made to the Reid Committee for the
13 February 2009 fundraising event. Spitzmesser claims that he was terminated not due to a lack of
14 work as documented but because he had disagreements with the management of the company
15 and with the alleged illegal activity relating to campaign contributions raised for the February
16 2009 fundraiser.³⁷ He specifically alleges that a TSKA partner coerced him into making a
17 contribution by stating "anyone who did not make a contribution will not have any work for the

³⁰ *Id.*

³¹ See Email to M. Jones re: EventCheckInvoice, Feb. 18, 2009, TSK000372-373.

³² See Email from C. Andersen to P. Memering, Feb. 24, 2008, TSK000375-376.

³³ See Credit Card Statement and Invoice, TSK000205-213.

³⁴ See TSKA Investigation Mem. at 6 and Check No. 9770, attached as Exhibit C of TSKA Investigation Mem.

³⁵ See List of Contributions Received, Attachment G.

³⁶ *Id.*

³⁷ Complaint at 1.

1 upcoming year.” Complaint at 1. When Spitzmesser told certain TSKA partners that he could
2 not afford to make a \$1,000 contribution, he claims that the partners arranged for him to obtain a
3 reimbursement. *Id.* Spitzmesser alleges that TSKA sought to “disguise” the reimbursement
4 scheme by reimbursing him with a company check that was purportedly for business expenses
5 but included an additional amount equal to his political contribution. *Id.* Specifically,
6 Spitzmesser claims that while his business expense report totaled \$1,476.59, the actual check he
7 received was for \$2,476.59.³⁸

8 A Supplemental Complaint filed on November 15, 2009 (“Supp. Complaint”) alleges that
9 Ms. Memering had conversations with Mr. Kimsey about other TSKA employees receiving
10 reimbursements for campaign contributions. Supp. Complaint at 1. In addition, the
11 Supplemental Complaint contends that Shelly Lyons, Business and Officer Manager of TSKA,
12 prepared the reimbursement checks. *Id.*

13 In response, TSKA admits that it used corporate funds to reimburse the complainant,
14 Spitzmesser, who made a \$1,000 contribution to the Reid Committee, as well as Christopher
15 Fenton, a TSKA employee, who made a \$500 contribution to the Committee.³⁹ The TSKA
16 response specifically states that before the Reid Fundraiser, Mr. Spitzmesser approached Mr.
17 Kimsey about seeking a reimbursement for his \$1,000 contribution to the Reid Committee.⁴⁰
18 Mr. Kimsey agreed to reimburse him from TSKA’s corporate account.⁴¹ At Mr. Kimsey’s
19 request, Ms. Memering approached Mr. Fenton to ask whether he would contribute to the

³⁸ Expense Report for Randy Spitzmesser, Feb. 5, 2008 and Check No. 3241, attached to Complaint.

³⁹ TSKA Investigation Mem. at 5.

⁴⁰ *Id.* at 6.

⁴¹ *Id.*

1 fundraiser.⁴² When Mr. Fenton expressed concern that he may not have adequate funds,
2 Ms. Memering informed him that Mr. Kimsey would authorize a reimbursement to Mr. Fenton.⁴³
3 Ms. Lyons prepared the reimbursement checks for Messrs. Spitzmesser and Fenton at Mr.
4 Kimsey's request.⁴⁴

5 After the Complaint was filed in September 2009, Mr. Kimsey repaid Mr. Spitzmesser's
6 \$1,000 reimbursement to TSKA with a personal check drawn from his personal bank account on
7 October 23, 2009,⁴⁵ and Mr. Fenton repaid his \$500 reimbursement to TSKA with a personal
8 check drawn from his account on October 25, 2009.⁴⁶

9 All other respondents deny that TSKA reimbursed them for political contributions,⁴⁷ and
10 we have found no information indicating otherwise. Furthermore, despite facts suggesting that
11 TSKA may have sought to disguise Spitzmesser's reimbursement by including the contribution
12 reimbursement in his expense reimbursement check,⁴⁸ Fenton's expense report, by comparison,
13 clearly itemizes the \$500 spent for the contribution to the Reid Committee.⁴⁹

14 In response to the coercion allegation, TSKA states "there was no evidence that
15 individuals were coerced to contribute to Senator Reid's re-election campaign."⁵⁰ Most of the

⁴² *Id.* at 6-7.

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 8.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 7.

⁴⁷ See Responses of Dwayne Miller, Mazie Hironaka, Greg Gordon, Michael Alcorn, Robert Boyle, William Snyder, Daniel Knott, Bruce Bowman, Alan Locke, and John Gautrey; TSKA Investigation Mem. at 8 (discussing contribution of Shelly Lyons).

⁴⁸ See Spitzmesser Expense Report, dated Feb. 5, 2008 (listing \$1,476.59 in expenses), and TSKA Check #3241, dated Feb. 17, 2009 (payment of \$2,476.59), both attached to Complaint.

⁴⁹ See Expense Report of Chris Fenton, TSK000165.

⁵⁰ TSKA Investigation Mem. at 4.

individual respondents personally deny that coercion took place, including TSKA Partner William Snyder who submitted a sworn declaration.⁵¹

E. ALLEGED FRAUDULENT DISCLOSURE OF CONTRIBUTOR INFORMATION

The complaint alleges that contributor information about Mazie Pusich, a public defender in Reno, Nevada and wife of a TSKA employee, and Dwayne Miller, President of JBA Consulting Engineers, were intentionally falsely disclosed as employees of TSKA. Complaint at 2. The Complaint further alleges that this information was "possibly" provided to give the impression that TSKA could meet the fundraising goal of \$20,000 requested by the Reid Committee. *Id.* Respondents Pusich and Miller have both submitted declarations stating that neither of them represented to the Reid Committee that they were employees of TSKA.⁵² Mr. Miller states that on February 2, 2009, he wrote a \$1,000 check and delivered it to Reid Committee but cannot recall whether he completed the contributor form.⁵³ Ms. Pusich also states that she delivered the check directly to the Reid Committee, but she does not indicate whether she filled out the form.⁵⁴

III. LEGAL ANALYSIS

A. REIMBURSEMENT OF CONTRIBUTIONS WITH CORPORATE FUNDS

1. TSKA and Windom Kimsey

A corporation is prohibited from making a contribution in connection with a federal election under the Act, and no officer or director of any corporation may consent to any

⁵¹ Declaration of William Snyder at ¶ 8, attached to Response of William Snyder.

⁵² See Response of Mazie Pusich ("Pusich Response") at 2; Response of Dwayne Miller ("Miller Response") at 2.

⁵³ Miller Response at 2.

⁵⁴ Declaration of Mazie Pusich at ¶ 3, attached to Pusich Response.

1 contribution by the corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). The Act also
2 prohibits a person from making a contribution in the name of another or knowingly permitting
3 his or her name to be used to effect such a contribution. *See* 2 U.S.C. § 441f; 11 C.F.R. § 110.4.
4 Commission regulations further provide that no person shall assist in making a contribution in
5 the name of another. *See* 11 C.F.R. § 110.4(b)(iii).

6 Based on TSKA's admission that it reimbursed Messrs. Spitzmesser and Fenton for
7 contributions that they made to the Reid Committee, TSKA made contributions in the names of
8 others with prohibited, corporate funds. Furthermore, because Mr. Kimsey authorized the
9 reimbursements, Mr. Kimsey is also liable for making contributions in the name of another and
10 for consenting to the making of corporate contributions.

11 A document produced by TSKA indicates that TSKA and Mr. Kimsey may have acted
12 knowingly and willfully. The draft invitation and donor card sent by the Reid Committee to Mr.
13 Kimsey contained language explicitly stating that under federal law, corporate contributions
14 were prohibited and that contributions must be made from personal funds. In addition, the final
15 invitations and donor cards prepared by TSKA staff included the same language. Accordingly,
16 TSKA and its staff had sufficient notice of the legal requirements for contributions to federal
17 candidates. Moreover, Peggy Memering, in an email to Reid Committee staff, confirmed that
18 she was aware that only personal, not corporate, contributions could be made for the fundraiser.⁵⁵

19 Despite this information, we do not recommend at this time that the Commission make
20 knowing and willful findings as to TSKA or Kimsey. In response to the Complaint, TSKA and
21 Mr. Kimsey provided extensive information as to the allegations in this matter, including

⁵⁵ *See* Email Exchange re: Reid FR list, Feb. 17, 2009, TSK000368; *see also* Credit Card Statement, TSK000211 (handwritten annotation on credit card statement for \$1,000 contribution by Kimsey to Friends for Harry Reid, "FYI .. Has to be personal contribution.").

1 information pertaining to additional violations and a comprehensive memorandum detailing the
2 internal corporate investigation of the allegations. Due to the small amount at issue, we do not
3 believe that an investigation into knowing and willful is warranted.⁵⁶ See *infra* Section IV.

4 Accordingly, we recommend that the Commission find reason to believe that TSKA and
5 Windom Kimsey violated 2 U.S.C. §§ 441b(a) and 441f and, as discussed *infra* pp. 24-26, enter
6 into pre-probable cause conciliation.

7 **2. Other Individual Respondents**

8 Both Messrs. Spitzmesser and Fenton have admitted to receiving reimbursements for
9 contributions made in their names. Mr. Spitzmesser was not named as a respondent and, given
10 that Mr. Fenton's reimbursement appears to have been limited to a one-time incident involving a
11 small amount in violation, we recommend that the Commission dismiss the allegation that he
12 violated 2 U.S.C. § 441f but send a cautionary letter. See MUR 5871 (Noe) (Commission
13 entered into conciliation agreements with super-conduits and former elected officials who
14 received reimbursements but dismissed other conduits with admonishment); *cf.* MUR 5666
15 (MZM) (Commission took no further action as to conduit respondents who had never made
16 political contributions prior to the contributions at issue in this case, were not familiar with the
17 process of making political contributions, and were not aware that their actions were illegal).

18 While Peggy Memering and Shelly Lyons appear to have assisted in executing the
19 reimbursements for Messrs. Spitzmesser and Fenton, they were lower level employees and
20 subordinates of Mr. Kimsey and acted at his request. See MUR 5871 (Noe), *supra*.
21 Accordingly, we recommend that the Commission dismiss the allegation that Peggy Memering

⁵⁶ See MUR 5405 (Apex Healthcare, Inc.) (declining to make knowing and willful findings as to corporation for section 441b and 441f violations where respondents provided full disclosure regarding allegations made in complaint).

1 and Shelly Lyons violated 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(iii) but send cautionary
2 letters.

3 The remaining individual respondents have either denied that they received
4 reimbursements for their contributions or stated that they did not make a contribution at all for
5 the Reid fundraiser. We have no information that would suggest otherwise. Accordingly, we
6 recommend that the Commission find no reason to believe that William Snyder, Robert Boyle,
7 Michael Alcorn, Greg Gordon, Dan Knott, Bruce Bowman, Alan Locke, John Gautrey, Mazie
8 Pusich, and Dwayne Miller violated 2 U.S.C. § 441f.

9 3. Reid Committee

10 The Act provides that no person shall knowingly accept a contribution made in the name
11 of another. 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(iv). The Reid Committee's Response states
12 that the Committee had no knowledge that contributions made in the name of Messrs.
13 Spitzmesser and Fenton were actually made by TSKA, and we have no information to the
14 contrary. The Committee also has disgorged the \$1,000 contribution of Mr. Spitzmesser
15 referenced in the Complaint to the U.S. Treasury. Thus, we recommend that the Commission
16 find no reason to believe that the Reid Committee violated 2 U.S.C. § 441f.

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19 **B. CORPORATE FACILITATION**

20 A corporation, including its officers, directors, or other representatives acting as agents of
21 the corporation, may not facilitate the making of a contribution by using its corporate resources
22 to engage in fundraising activities for any federal election. See 2 U.S.C. § 441b; 11 C.F.R.

§ 114.2(f)(1). The regulations provide examples of conduct that constitute corporate facilitation, which are discussed below. See 11 C.F.R. § 114.2(f)(2).

1. Ordering Subordinates to Plan Fundraising Project

Officials or employees of a corporation are prohibited from ordering or directing subordinates or support staff to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources, without obtaining advance payment. 11 C.F.R. § 114.2(f)(2)(i)(A). When Mr. Kimsey asked his assistant, Peggy Memering, whose normal responsibilities included planning office parties, to handle the logistics of the Reid Fundraiser, without obtaining advance payment, such action constituted corporate facilitation. Similarly, by instructing Jane Michael, TSKA's marketing and design specialist, to create the invitations, Mr. Kimsey used TSKA's corporate resources for fundraising purposes.

2. Solicitations Not Within the Restricted Class

Corporations such as TSKA, which do not have separate segregated funds, are permitted to solicit contributions to be sent directly to candidates, but those solicitations are limited solely to its restricted class, consisting of its stockholders and executive or administrative personnel, and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(j) and 114.2(f). Moreover, corporate facilitation may result if the corporation uses its list of customers, clients, vendors, or others, who are not within the restricted class, to solicit contributions or distribute invitations to fundraisers without advance payment for the fair market value of the list. See 11 C.F.R. § 114.2(f)(2)(i)(C).

1 According to the Responses, Mr. Kimsey personally solicited outside consultants for the
2 Reid Fundraiser,⁵⁷ and he provided Ms. Memering with a list of potential contributors for the
3 fundraising event.⁵⁸ Copies of the guest list provided by TSKA include numerous individuals
4 who worked for outside firms and thus were not in TSKA's restricted class.⁵⁹ The Reid
5 Committee did not pay for use of TSKA's list. Thus, the available information indicates that
6 TSKA and Windom Kimsey facilitated the making of contributions by using a list of individuals
7 not within TSKA's restricted class to solicit contributions.

8 3. Providing Catering without Advance Payment

9 Under 11 C.F.R. § 114.2(f)(2)(i)(E), corporate facilitation includes "providing catering or
10 other food services operated or obtained by the corporation or labor organization, unless the
11 corporation or labor organization receives advance payment for the fair market value of the
12 services." Because TSKA did not receive advance payment for the catering and Mr. Kimsey
13 paid for the expenses himself, TSKA and Mr. Kimsey appear to have facilitated the making of a
14 contribution.

15 4. Collecting and Forwarding Contributions

16 Commission regulations prohibit corporations from collecting and forwarding
17 contributions. See 11 C.F.R. §§ 110.6(b)(2)(ii), 114.2(f)(2)(ii). Section 114.2(f)(2)(ii) provides
18 that facilitation includes the providing of materials for the purpose of transmitting or delivering
19 contributions, such as stamps, envelopes or other similar items. *Id.* In addition, corporations are

⁵⁷ See, e.g., Response of Dwayne Miller at 1; Response of Greg Gordon at 1, TSKA Investigation Mem. at 6.

⁵⁸ TSKA Investigation Mem. at 7.

⁵⁹ See, e.g., Guest List, TSK000002.

1 prohibited from acting as conduits for contributions earmarked to candidates or their authorized
2 committees under 11 C.F.R. § 110.6(b)(2)(ii). *Id.*

3 According to documents produced by TSKA, TSKA collected and forwarded
4 contributions on at least one occasion. On March 31, 2009, Ms. Memering sent the Reid
5 Committee an email notifying it that she was putting a check from Alan Locke for \$1,000 in the
6 mail.⁶⁰ In an email dated March 13, 2009, Ms. Memering faxed a copy of a contribution form
7 with the contributor's credit card number to the Reid Committee apparently because the
8 Committee had not received a copy.⁶¹ Ms. Memering further indicated that she would be
9 looking into "the other missing donations,"⁶² possibly suggesting that she may be sending other
10 contributions to the Reid Committee that it may not have received. By collecting and forwarding
11 one or more contributions designated for the Reid Committee, TSKA appears to have facilitated
12 the making of contributions.

13 5. Alleged Coercion

14 Facilitation also includes using coercion to urge any individual to make a contribution or
15 engage in fundraising on behalf of a candidate or political committee. 11 C.F.R.
16 § 114.2(f)(2)(iv). In the Complaint, Spitzmesser provides specific information about coercive
17 statements made by an unnamed partner of TSKA; *see supra* Section II.C., and states that he
18 agreed to make the \$1,000 contribution "out of fear of losing my job." Complaint at 1.

19 The Complaint does not identify the partner who allegedly made the coercive statements,
20 and TSKA has largely denied that coercion took place. Other than the information provided by

⁶⁰ See Email from Peggy Memering to Christopher Anderson, March 31, 2009, TSK000388.

⁶¹ See Email from Peggy Memering to Christopher Anderson, March 13, 2009, TSK000386-387.

⁶² *Id.*

1 the complaint, no other individual has claimed that they were coerced into making a contribution.
2 William Snyder, a possible unnamed partner who coerced Spitzmesser, has submitted a sworn
3 declaration stating that he did not coerce Spitzmesser. We have received no such declaration
4 from Mr. Kimsey, who could have made the alleged statements to Mr. Spitzmesser, and TSKA's
5 response does not specifically address whether Mr. Spitzmesser was coerced. Nevertheless, we
6 do not recommend opening an investigation to establish whether TSKA facilitated contributions
7 through coercion. The amount at issue is relatively small, and even if Mr. Spitzmesser's
8 contribution was coerced, the information presented already appears to establish that his
9 contribution was facilitated by other means. *See also infra* pp. 25-26 (amount in violation and
10 civil penalty determined by the amount of contributions facilitated, not the number of ways in
11 which the same contribution is facilitated).

12 6. Reid Committee

13 Political committees are prohibited from knowingly accepting corporate contributions.
14 *See* 2 U.S.C. § 441b(a). The draft invitation first prepared by the Reid Committee clearly states
15 that "Tate Snyder Kimsey Architects" was hosting the fundraiser, and the Committee therefore
16 knew or should have known that the firm, which was incorporated and did not have a registered
17 political committee, was subject to the restrictions set forth in section 441b and 11 C.F.R.
18 § 114.2(f). The documents provided by TSKA, in particular the email communications between
19 staff of TSKA and Reid Committee staff, demonstrate that Reid Committee staff had sufficient
20 notice that TSKA staff was engaging in improper facilitation of contributions in a variety of
21 ways as referenced above. *See supra* Section II.B. For example, the Reid Committee
22 affirmatively agreed to reimburse TSKA for the catering costs, rather than make an advance
23 payment. *See supra* pp. 9-10. In addition, while the Committee knew that TSKA would be

1 sending out the invitations, it apparently never paid for the costs associated with them. *See supra*
2 pp. 7-9. Emails also show that Christopher Anderson knew that individuals outside of TSKA's
3 restricted class were invited to the fundraiser by TSKA and asked to make contributions to the
4 Reid Committee, which the Committee accepted. *See id.* Furthermore, emails show that Megan
5 Jones and Christopher Anderson of the Reid Committee affirmatively requested TSKA staff to
6 solicit individuals not within the restricted class and to assist Committee staff in collecting
7 outstanding contributions. *See id.*

8 The circumstances in this matter are similar to those in MUR 5366 (Tab Turner),
9 where the Commission entered into a conciliation agreement with Edwards for President based
10 upon the Committee's knowing acceptance of facilitated contributions. *See* MUR 5366,
11 Conciliation Agreement with Edwards for President ("Edwards Committee CA"). In that matter,
12 Tab Turner directed his subordinate, Brenda Gwin, to organize and administer fundraising events
13 for the Committee and served as a "de facto campaign employee" at her employer's expense.
14 MUR 5366, General Counsel's Report #4 ("GCR #4") at 20. Like Ms. Memering, Gwin would
15 make calls ensuring that individuals received invitations and collecting outstanding
16 contributions. *Id.* at 21; Edwards Committee CA at ¶ 10. The Edwards Committee and Gwin
17 exchanged numerous emails and phone calls in which Committee staff would ask her to send
18 invitations for fundraisers and collect and forward contributions. MUR 5366, GCR #4 at 21;
19 Edwards Committee CA at ¶ 8. Based upon these communications, there was sufficient
20 information to establish that the Edwards Committee had knowledge that Tab Turner was using
21 his law firm and staff to plan and administer fundraising events and thus liable under 2 U.S.C.
22 § 441b(a). MUR 5366, GCR #4 at 21; Edwards Committee CA at ¶ V. Here, as in MUR 5366,
23 the correspondence between the Reid Committee and TSKA staff demonstrate that the Reid

1 Committee had the requisite knowledge that TSKA corporate staff and resources were being
2 used to hold the Reid fundraiser and raise and send contributions to the Committee.

3 7. Summary

4 The available information indicates that TSKA and Windom Kimsey, President of
5 TSKA, used corporate resources to hold the Reid Fundraiser and improperly facilitated
6 contributions in a number of ways as set forth in 11 C.F.R. § 114.2(f). Mr. Kimsey ordered
7 subordinates to plan and organize the Reid Fundraiser, including producing and distributing the
8 invitations to individuals outside the restricted class. TSKA also failed to obtain advance
9 payment for catering costs and does not appear to have received any payment for staff time used
10 to plan the fundraiser or costs relating to invitations. Furthermore, TSKA staff collected and
11 forwarded contributions to the Reid Committee. Accordingly, we recommend that the
12 Commission find reason to believe that TSKA and Windom Kimsey violated 2 U.S.C. § 441b(a)
13 and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f).

14 In addition, the available information indicates that the Reid Committee actively
15 coordinated its activities with TSKA for the Reid Fundraiser. The Reid Committee exchanged
16 numerous emails with TSKA staff about receiving contributions from guests outside of TSKA's
17 restricted class prior to the event, entered into an arrangement with TSKA to reimburse the
18 company for catering costs, and appears not to have paid for costs of producing and sending the
19 invitations although the Committee had knowledge that TSKA would be responsible for such
20 tasks. Accordingly, we recommend that the Commission find reason to believe that the Reid
21 Committee violated 2 U.S.C. § 441b(a) by knowingly accepting prohibited contributions.

C. GOVERNMENT CONTRACTOR PROHIBITION

2 U.S.C. § 441c(a) prohibits any person:

who enters into any contract with the United States of any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States . . . , if payment for the performance of such contract . . . is to be made in whole or in part from funds appropriated by the Congress at any time between the commencement of negotiations for the latter of (A) the completion of performance under; or (B) the termination of negotiations, for such contract . . . directly or indirectly to make any contribution of money or other things of value”

TSKA's Response states that it was selected for an IDIQ contract on September 16, 2008 and executed the contract on April 2, 2009. Thus, it appears that TSKA and GSA were in negotiations when TSKA held the Reid Fundraiser in February 2009 and made contributions to the Reid Committee as discussed in *supra* Section III.B. Accordingly, we recommend that the Commission find reason to believe that TSKA violated 2 U.S.C. § 441c.

D. REPORTING VIOLATIONS

The Act requires political committees to file reports of receipts and disbursements, 2 U.S.C. § 434(a)(1), and requires candidate committees to identify persons who make contributions that when aggregated exceed \$200 for the election cycle. 2 U.S.C. § 434(b)(3)(A). The Act and Commission regulations define “identification” to include the individuals name, address, occupation, and name of employer. 2 U.S.C. § 431(13); 11 C.F.R. § 100.12.

If a treasurer of a political committee shows that best efforts have been used to obtain information required by the Act, any report of such committee will be considered to be in compliance with the Act. 2 U.S.C. § 432(i); 11 C.F.R. § 104.7(a). To demonstrate “best efforts,” all written solicitations must include a clear request for the contributor's name, mailing address, occupation and name of employer. 11 C.F.R. § 104.7(b)(1)(i). For each contribution in excess of \$200 per calendar year lacking the required contributor information, the treasurer must

1 make at least one effort to obtain the information no later than 30 days after the receipt of the
2 contribution. *Id.*

3 In this matter, the donor cards attached to the invitations included the best efforts
4 disclaimer language set forth in section 104.7(b)(1)(i). However, the Reid Committee
5 misreported identifying information for Mazie Pusich and Dwayne Miller, stating that both were
6 employed by TSKA. Both Ms. Pusich and Mr. Miller have stated that they did not represent to
7 the Reid Committee that they were employed by TSKA, and Mr. Miller stated that he could not
8 remember filling out a donor card. There is a question as to whether the Committee sought to
9 obtain missing information within 30 days of the receipt of the contributions and met the best
10 efforts safe harbor under 11 C.F.R. § 104.7. Nevertheless, these two contributions only involve a
11 small amount in violation of \$1,500. Moreover, once the Committee learned about the
12 complaint's allegations, the Committee asked each contributor associated with the fundraiser to
13 confirm his or her employer and occupation and to confirm that contributions were not
14 reimbursed. Accordingly, we do not recommend that the Commission pursue the allegation that
15 the Reid Committee violated 2 U.S.C. § 434(b).

16 Separate from the contributions lacking the correct identifying information, it appears
17 that the Reid Committee failed to disclose two additional contributions resulting from the Reid
18 Fundraiser. According to documents submitted by TSKA, Charles Andersen made a \$1,000
19 contribution, and Shelly Lyons made a \$500 contribution to the Reid Committee.⁶³ However,
20 the Committee's disclosure reports do not reflect such contributions being made. Accordingly,
21 we recommend that the Commission find reason to believe that Reid Committee violated

⁶³ See TSKA Contributor List, TSK000002; Email from Peggy Memering to Christopher Andersen, TSK000386-387.

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**2 U.S.C. § 434(b) by failing to identify persons who made contributions exceeding \$200 when
aggregated for the election cycle.**

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4 **V. RECOMMENDATIONS**

- 5 1. Find reason to believe that Tate Snyder Kimsey Architects, Ltd. violated 2 U.S.C.
6 §§ 441b(a) and 441f;
- 7 2. Find reason to believe that J. Windom Kimsey violated 2 U.S.C. §§ 441b(a) and 441f;
- 8 3. Dismiss the allegation that Christopher Fenton violated 2 U.S.C. § 441f and send a
9 cautionary letter;
- 10 4. Dismiss the allegation that Peggy Memering and Shelly Lyons violated 2 U.S.C.
11 § 441f and 11 C.F.R. § 110.4(b)(iii) and send cautionary letters;
- 12 5. Find no reason to believe that William Snyder, Michael Alcorn, Robert Boyle,
13 Dwayne Miller, Greg Gordon, Daniel Knott, Bruce D. Bowman, Alan Locke, John
14 Gautrey, and Mazie Pusich violated 2 U.S.C. § 441f;
- 15 6. Find reason to believe that Tate Snyder Kimsey Architects, Ltd. violated 2 U.S.C.
16 § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f);

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7. Find reason to believe that Windom Kimsey violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f);
8. Find reason to believe that Tate Snyder Kimsey Architects, Ltd. violated 2 U.S.C. § 441c;
9. Find no reason to believe that Friends for Harry Reid and Claude Zobel, in his official capacity as Treasurer, violated 2 U.S.C. § 441f;
10. Find reason to believe that Friends for Harry Reid and Claude Zobel, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a);
11. Find reason to believe that Friends for Harry Reid and Claude Zobel, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(3)(A);
12. Authorize this Office to enter into conciliation with Tate Snyder Kimsey Architects, Ltd., J. Windom Kimsey, and Friends for Harry Reid and Claude Zobel, in his official capacity as Treasurer, prior to a finding of probable cause;
13. Close the file as to Christopher Fenton, William Snyder, Michael Alcorn, Robert Boyle, Peggy Memering, Shelly Lyons, Dwayne Miller, Greg Gordon, Daniel Knott, Bruce D. Bowman, Alan Locke, John Gautrey, and Mazie Pusich.
- 14.
15. Approve the attached Factual and Legal Analyses; and
16. Approve the appropriate letters.

5/12/10

Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel for Enforcement


Julie Kara McConnell
Assistant General Counsel

Staff Assigned: Jin Lee